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No. 371

In the Supreme Court of the United States

OCTOBER TERM, 1940

ESTATE OF ANNA M. KELLER, PIUS P. KELLER AND MARCELLA V. KELLER, EXECUTORS, PETITIONERS

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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Although we believe the decision below to be correct, we do not oppose the granting of the writ.

The question presented is whether, when a decedent at the age of 75 takes out a single premium life insurance policy and an annuity policy, the combined effect of which is to eliminate the risk inherent in life insurance, the proceeds of the so-called insurance policy constitute an amount receivable "as insurance" within the meaning of Section 302 (g) of the Revenue Act of 1926, as amended. The decision below, as asserted by the

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petitioner, is in conflict with *Commissioner* v. *Le Gierse*, 110 F. (2d) 734 (C. C. A. 2d), in which the Government is petitioning for certiorari, No. 237, upon the basis of a conflict with the decision below as well as with *Commissioner* v. *Tyler*, 111 F. (2d) 422 (C. C. A. 8th). The Government is not opposing a petition for certiorari filed by the taxpayer in the *Tyler* case, No. 368.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

SEPTEMBER 1940.

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